



AUG 25 2006

Folder: 02399-44

JACOB SHARP
UNITED STATES DEPARTMENT OF ENERGY c/o
SUNRISE ENGINEERING
25 EAST 500 NORTH
FILLMORE, UT 84631

Re: Proposed Installation of one (1) 3-inch Water Pipeline Crossing of Railroad Property at Mile Post 0.25 on the Cane Creek Branch at or near Thompson, Grand County, Utah.

Dear Mr. Sharp:

Attached is your original copy of our Agreement, fully executed on behalf of the Railroad Company. When you or your representative enter the Railroad Company's property, a copy of this fully-executed document must be available at the site to be shown on request to any Railroad employee or official.

If this construction is to be done by a contractor, before work can begin, the Contractor's Right of Entry Agreement must be executed by the contractor and returned to me, together with their proof of insurance, as provided in this Agreement.

In accordance with the terms of the Agreement, you are required to notify the following local Railroad Company officials at least 10 days in advance of the date you plan on entering the right of way for further instructions and approval to commence construction.

Bobby Cordova
Manager Track Maintenance
2790 "D" Road
Grand Junction, CO 81501

Phone: 970-248-4254
Fax: 970-248-4216

Stephen S. Thompson
Manager Signal Maintenance
2790 D Road
Grand Junction, CO 81501

Phone: 970-248-4237

970-266-0761

* **NOTE:** Neither Licensee nor it's Contractor shall be allowed onto Railroad property until receiving further instructions and approval to commence construction from the above-mentioned Railroad officials. Railroad flagman, inspectors, or other safety measures may be required; and these services must be coordinated by the above-mentioned Railroad officials.

Real Estate

UNION PACIFIC RAILROAD
1400 Douglas Street, Stop 1690
Omaha Nebraska 68179-1690

The Railroad Company has authorized the installation of fiber optic cable facilities on its property in certain areas. You are also required to notify the Telecommunications ("Call Before You Dig") number at least 10 days in advance of the date you plan on entering the right of way to determine if fiber optic cable is buried on the subject property.

Telecommunications ("Call Before You Dig"): 1-800-336-9193

As an additional note, the top of the casing must be a minimum of two (2) feet below any existing fiber optic cable. Any open excavation required within five (5) feet of the fiber optic cable must be dug by hand.

All future insurance notices should be forwarded to:

Real Estate Department
Folder No: 2399-44
Union Pacific Railroad Company
1400 Douglas Street, STOP 1690
Omaha, NE 68179-1690

Please contact me with any questions or concerns at (402) 544-8498.

Sincerely yours,



Bill Ince
Manager - Contracts

AUDIT 241396PL X 940208
Form Approved, AVP-Law

Folder No. 02399-44

PIPELINE CROSSING AGREEMENTMile Post: 0.25, Cane Creek Subdivision
Location: Thompson Springs, Grand County, Utah

THIS AGREEMENT ("Agreement") is made and entered into as of August 1, 2006, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **UNITED STATES DEPARTMENT OF ENERGY**, c/o S.M. Stoller Corporation to be addressed at 2597 "B" 3/4 Road, Grand Junction, Colorado 81503 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**Article I. LICENSE FEE.**

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of One Thousand Five Hundred Dollars (\$1,500.00).

Article II. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate one underground pipeline for transporting and conveying water and access for phone line and 1-1/4" conduit across Licensor's track(s) and property (the "Pipeline") in the location shown and in conformity with the dimensions and specifications indicated on the print dated July 10, 2006 and marked Exhibits A and A-1 dated August 16, 2006, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying water and access for phone line, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use other than described above, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article III. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in Exhibit B, attached hereto and hereby made a part hereof.

Article IV. IF WORK IS TO BE PERFORMED BY CONTRACTOR

If a contractor is hired by the Licensee to do any of the work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall require its contractor to execute the Licensor's current form of Contractor's Right of Entry Agreement. Licensee acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and an understanding of its terms, provisions, and requirements, and will inform its contractor of the need to execute the agreement. Under no circumstances will Licensee's contractor be allowed onto Licensor's property without first executing the Contractor's Right of Entry Agreement and the contractor providing to the Licensor the insurance binders, certificates and endorsements described in the Contractor's Right of Entry Agreement.

Article V. INSURANCE.

A. Before commencement of the term of this Agreement and prior to any Pipeline construction, the Licensee or Licensee's contractor (whichever entity will be performing the Pipeline construction work), at its sole expense, shall provide to the Licensor the insurance binders, certificates and endorsements described in Exhibit C, attached hereto and hereby made a part hereof.

B. Not more frequently than once every two years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. All insurance correspondence shall be directed to:

Bill Ince
Folder No. 02399-44
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street STOP 1690
Omaha, NE 68179-1690

D. If the Licensee is a public entity subject to any applicable statutory tort laws, the limits of insurance described in Exhibit C shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of Licensor.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

Article VI. TERM.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

UNITED STATES DEPARTMENT OF
ENERGY

By: Bill Ince
Manager - Contracts

By: Donald R. Metzler
Donald R. Metzler
Moab Federal Project Director

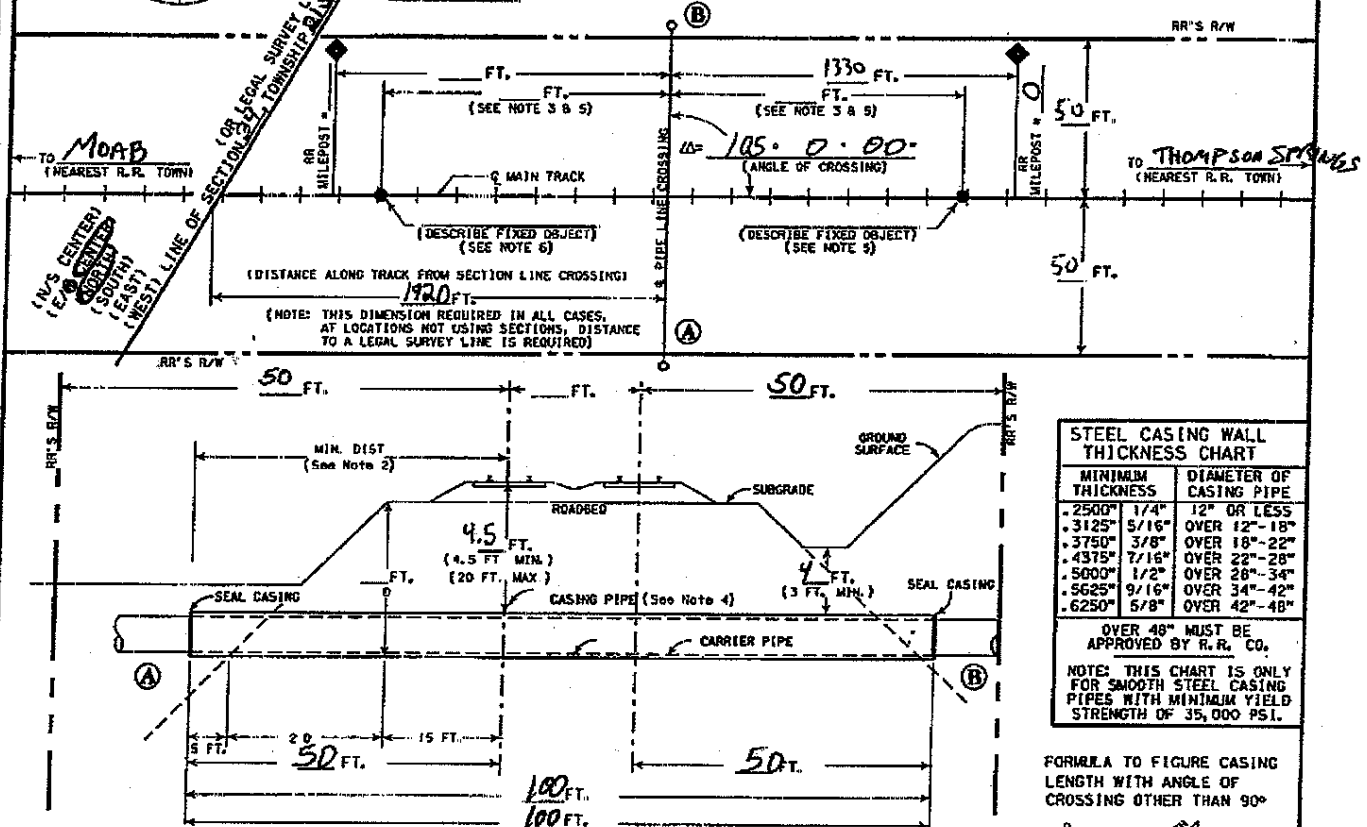
PLACE ARROW INDICATING NORTH
DIRECTION RELATIVE TO CROSSING

FORM DR-0404-B
REV. 5-15-98

ENCASED NON-FLAMMABLE PIPELINE CROSSING

NOTE: ALL AVAILABLE DIMENSIONS MUST BE
FILLED IN TO PROCESS THIS APPLICATION.

NO SCALE



MINIMUM THICKNESS		DIAMETER OF CASING PIPE
.2500"	1/4"	12" OR LESS
.3125"	5/16"	OVER 12"-18"
.3750"	3/8"	OVER 18"-22"
.4375"	7/16"	OVER 22"-28"
.5000"	1/2"	OVER 28"-34"
.5625"	9/16"	OVER 34"-42"
.6250"	5/8"	OVER 42"-48"

FORMULA TO FIGURE CASING
LENGTH WITH ANGLE OF
CROSSING OTHER THAN 90°

Diagram illustrating the relationship between B , $\Delta \text{ SIN}$, $1/2 \text{ CASING LENGTH}$, and $\text{MIN. DIST.. (NOTE 2)}$.

NOTES :

- NOTES
1. ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM $\frac{1}{2}$ OF TRACK.
2. CASING TO EXTEND BEYOND THE $\frac{1}{2}$ OF TRACK AT RIGHT ANGLES THE GREATER OF 20×20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
3. MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, $\frac{1}{2}$ OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
4. SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
5. ALLOWABLE FIXED OBJECTS INCLUDE: SIGNALS, $\frac{1}{2}$ OF ROAD CROSSING, OVERHEAD WIRING, WIRING (GIVE ROAD NAME), OR CULVERTS.
6. CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

A) IS PIPELINE CROSSING WITHIN DEDICATED STREET ? ____ YES; ☒ NO;

B) IF YES, NAME OF STREET

D) DISTRIBUTION LINE X OR TRANSMISSION LINE

C) CARRIER PIPE :

COMMODITY TO BE CONVEYED WATER
OPERATING PRESSURE 90 PSI
WALL THICKNESS 389" DIAMETER 3" MATERIAL HDPE

E) CASING PIPE :
WALL THICKNESS 1/4" ; DIAMETER 12" ; MATERIAL STEEL

NOTE: CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.

F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
~~X~~ DRY BORE AND JACK (WET BORE NOT PERMITTED);
 TUNNEL: OTHER

G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? YES: NO:

H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK

1) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE DOES; ☒ DOES NOT; EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO. 20060517042

EXHIBIT "A"

(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.

Cane Creek

SUBDIVISIONS

M. P. 0.25 E. S. 13+30±

ENCASED Pipeline CROSSING AT

Thompson Grand UT

(CITY)	(COUNTY)	(STATE)

United States Department of Energy

APPLICANT:

RR FILE NO. 2399-44 DATE 7-10-06

WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS
DEPARTMENT MUST BE CONTACTED IN ADVANCE
OF ANY WORK TO DETERMINE EXISTENCE AND
LOCATION OF FIBER OPTIC CABLE.
PHONE : 1-800-336-9193

RA9072506

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- A. The Pipeline shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering - Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- B. All work performed on property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline where it passes underneath the roadbed and track or tracks of the Licensor, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefor, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground

Section 3. NOTICE OF COMMENCEMENT OF WORK.

If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensors before commencing any work. In all other situations, the Licensee shall notify the Licensors at least ten (10) days (or such other time as the Licensors may allow) in advance of the commencement of any work upon property of the Licensors in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensors in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

- A. The license herein granted is subject to the needs and requirements of the Licensors in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensors' property, as the Licensors may designate, whenever, in the furtherance of its needs and requirements, the Licensors, at its sole election, finds such action necessary or desirable
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensors in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

The Pipeline and all parts thereof within and outside of the limits of the property of the Licensors shall be constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensors, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on the Licensors' property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensors during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensors' premises to be used by the

Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.

- B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.**

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensor authorizes the Licensee to take down any fence of the Licensor or in any manner move or disturb any of the other property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property of the Licensor

Section 10. INDEMNITY.

- A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).
- B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, THE LICENSEE AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY LOSS WHICH IS DUE TO OR ARISES FROM:**
- 1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;**
 - 2. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM; OR**
 - 3. LICENSEE'S BREACH OF THIS AGREEMENT,**

EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the

Licensee fails to do the foregoing, the Licenser may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licenser of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licenser shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licenser may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licenser of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licenser to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

- A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licenser to the Licensee specifying such default, the Licenser may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licenser, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licenser, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Re 002306

EXHIBIT C

Union Pacific Railroad Insurance Requirements

Licensee, or its contractor (whichever entity will be performing the Pipeline construction work) shall, at its sole cost and expense, procure and maintain until construction of the Pipeline has been completed the insurance described below. After construction of the Pipeline has been completed, Licensee shall, at its sole cost and expense, maintain in effect during the term of this Agreement all of the insurance coverage described below except for the Railroad Protective Liability insurance coverage described in Paragraph D below which is required only during the period involving construction, maintenance, repair or reconstruction of the Pipeline.

A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. **Workers Compensation and Employers Liability** insurance. Coverage must include but not be limited to:

- Licensee's and/or Licensee's contractor's statutory liability under the workers' compensation laws of the state where the Pipeline is located.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee, and/or Licensee's contractor, is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing

equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

D. Railroad Protective Liability insurance. Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Licensor as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Licensor before the work may be commenced and until the original policy is forwarded to Licensor.

E. Umbrella or Excess insurance. If Licensee, and/or Licensee's contractor, utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above (except worker's compensation and employers liability) must include Licensor as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Licensor as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Licensor's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

I. Prior to commencing any work, Licensee, and/or Licensee's contractor, shall furnish Licensor with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

J. All insurance policies must be written by a reputable insurance company acceptable to Licensor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state in which the Pipeline is located.

K. The fact that insurance is obtained by Licensee, and/or Licensee's contractor, or by Licensor on behalf of Licensee, and/or Licensee's contractor, will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor from Licensee or any third party will not be limited by the amount of the required insurance coverage.

RESOLUTION

WHEREAS, UNION PACIFIC RAILROAD COMPANY has tendered to UNITED STATES DEPARTMENT OF ENERGY an agreement covering a pipeline crossing at Thompson, Grand County, Utah; and

WHEREAS, the Board of Directors of UNITED STATES DEPARTMENT OF ENERGY has said proposed agreement before it and has given it careful review and consideration; and

WHEREAS, it is considered that the best interests of said Company will be subserved by the acceptance of said agreement;

THEREFORE, BE IT RESOLVED by the Board of Directors of UNITED STATES DEPARTMENT OF ENERGY:

That the terms of the agreement submitted by UNION PACIFIC RAILROAD COMPANY as aforesaid be, and the same are hereby, accepted on behalf of said Company;

That the Vice President of said Company is hereby authorized, empowered and directed to execute said agreement on behalf of said Company and that the Secretary of said Company is hereby authorized and directed to attest said agreement and to attach to each duplicate original of said agreement a certified copy of this Resolution.

STATE OF _____)
COUNTY OF _____) ss

I, _____, Secretary of UNITED STATES DEPARTMENT OF ENERGY, hereby certify that the above and foregoing is a true, full and correct copy of a resolution adopted by the Board of Directors of UNITED STATES DEPARTMENT OF ENERGY at a meeting held according to law at Grand Junction, Colorado, on the _____ day of _____, 20____, as the same appears on file and of record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Company, this _____ day of _____, 20____.

Secretary



AUG 25 2006

Folder: 02399-44

JACOB SHARP
UNITED STATES DEPARTMENT OF ENERGY c/o
SUNRISE ENGINEERING
25 EAST 500 NORTH
FILLMORE, UT 84631

Re: Proposed Installation of one (1) 3-inch Water Pipeline Crossing of Railroad Property at Mile Post 0.25 on the Cane Creek Branch at or near Thompson, Grand County, Utah.

Dear Mr. Sharp:

Attached is your original copy of a Contractor's Right of Entry Agreement, fully executed on behalf of the Railroad Company. When you or your representative enter the Railroad Company's property, a copy of this fully-executed document must be available at the site to be shown on request to any Railroad employee or official.

In accordance with the terms of the Agreement, you are required to notify the following local Railroad Company officials at least 10 days in advance of the date you plan on entering the right of way for further instructions and approval to commence construction.

Bobby Cordova
Manager Track Maintenance
2790 "D" Road
Grand Junction, CO 81501

Phone: 970-248-4254
Fax: 970-248-4216

Stephen S. Thompson
Manager Signal Maintenance
2790 D Road
Grand Junction, CO 81501

Phone: 970-248-4237

*** NOTE:** Neither Licensee nor it's Contractor shall be allowed onto Railroad property until receiving further instructions and approval to commence construction from the above-mentioned Railroad officials. Railroad flagman, inspectors, or other safety measures may be required; and these services must be coordinated by the above-mentioned Railroad officials.

Real Estate

UNION PACIFIC RAILROAD
1400 Douglas Street, Stop 1690
Omaha, Nebraska 68179-1690
fx (402) 501-0340

The Railroad Company has authorized the installation of fiber optic cable facilities on its property in certain areas. You are also required to notify the Telecommunications ("Call Before You Dig") number at least 10 days in advance of the date you plan on entering the right of way to determine if fiber optic cable is buried on the subject property.

Telecommunications ("Call Before You Dig"): 1-800-336-9193

As an additional note, the top of the casing must be a minimum of two (2) feet below any existing fiber optic cable. Any open excavation required within five (5) feet of the fiber optic cable must be dug by hand.

Please contact me with any questions or concerns at (402) 544-8498.

Sincerely yours,



Bill Ince
Manager - Contracts

AUDIT 241396

PL X&E ROE 940201
Form Approved, AVP-Law

Folder No. 02399-44

Re-071204

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the 15 day of August, 20 06, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, (hereinafter the "Railroad") and S.M. Stoller, a Colorado corporation/partnership, whose address is 2597 B 3/4 Road, Grand Junction, CO 81503 (hereinafter the "Contractor").

RECITALS:

The Contractor has been employed by **UNITED STATES DEPARTMENT OF ENERGY** for the purpose of constructing only a underground pipeline crossing (hereinafter "work") on and across property of the Railroad at or near Mile Post 533.3, Green River Subdivision near Thompson, Grand County, Utah. The underground 12" pipeline crossing will provide access for 3" HPDE water line, a telephone line (50 pairs) and 1-1/4" conduit for access (see Exhibits A and A-1).

The Contractor has requested the Railroad to permit it to perform the work and Railroad is agreeable thereto, subject to the following terms and conditions.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the Railroad and Contractor, as follows:

Article I. DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this Agreement to the Contractor shall include the Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

Article II. RIGHT GRANTED; PURPOSE.

The Railroad hereby grants to the Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals hereof and as shown on the attached print dated July 10, 2006, marked Exhibit A, for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of the Railroad's property specifically described herein, or designated by the Railroad representative named in Article V.

Article III. TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND C.

The terms and conditions contained in Exhibits B and C, hereto attached, are hereby made a part of this Agreement.

Article IV. ADMINISTRATIVE FEE.

Applicant shall pay to the Railroad **FIVE HUNDRED DOLLARS (\$500.00)** as reimbursement for clerical, administrative and handling expense in connection with the processing of this Agreement.

**Article V. ALL EXPENSES TO BE BORNE BY CONTRACTOR;
RAILROAD REPRESENTATIVE.**

The Contractor shall bear any and all costs and expenses associated with any work performed by the Contractor, or any costs or expenses incurred by the Railroad relating to this Agreement. All work performed by Contractor on Railroad's property shall be performed in a manner satisfactory to the respective local Superintendent of Transportation Services of the Railroad or his authorized representative (hereinafter the "Railroad Representative").

Article VI. TERM; TERMINATION.

A. The grant of right herein made to Contractor shall commence on 8-28-06, and continue until 2-28-07, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad property.

B. This Agreement may be terminated by either party on ten (10) days' written notice to the other party.

Article VII. CERTIFICATE OF INSURANCE.

A. Before commencing any work, the Contractor will provide the Railroad with a Certificate, identifying Folder No. 02399-44, issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit C of this Agreement in a policy which contains the following type of endorsement.

UNION PACIFIC RAILROAD COMPANY is named as additional insured with respect to all liabilities arising out of Insured's, as Contractor, performance of any work on the property of the Railroad.

B. Contractor warrants that this Agreement has been thoroughly reviewed by its insurance agent(s)/broker(s) and that said agent(s)/broker(s) has been instructed to procure insurance coverage and an endorsement as required herein.

C. All insurance correspondence shall be directed to: Folder No. 02399-44, Union Pacific Railroad Company, Real Estate Department, 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690.

Article VIII. CHOICE OF FORUM.

Litigation arising out of or connected with this Agreement may be instituted and maintained in the courts of the States of Nebraska and Utah only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: *Bill [Signature]*
Manager - Contracts

S.M. Stoller Corporation
(Contractor Name)
By: *James P. Moran*
Title: SR Vice President
Telephone: (303) 546-4316
Fax: (303) 443-1408

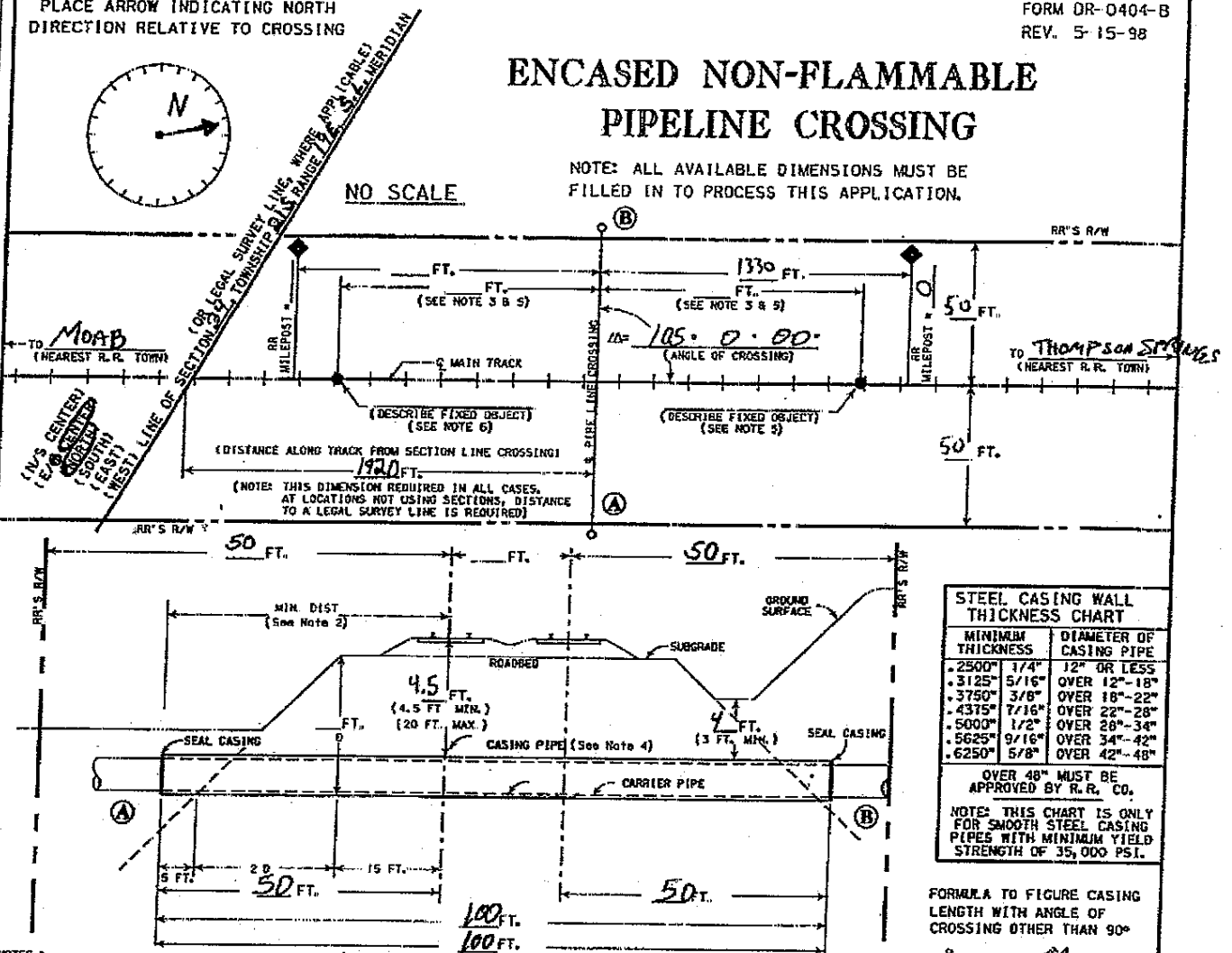
PLACE ARROW INDICATING NORTH
DIRECTION RELATIVE TO CROSSING

FORM DR-0404-B
REV. 5-15-98

ENCASED NON-FLAMMABLE PIPELINE CROSSING

NOTE: ALL AVAILABLE DIMENSIONS MUST BE
FILLED IN TO PROCESS THIS APPLICATION.

NO SCALE



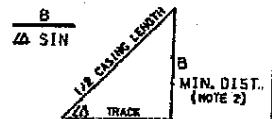
STEEL CASING WALL THICKNESS CHART

MINIMUM THICKNESS	DIAMETER OF CASING PIPE
2500"	1/4" 12" OR LESS
3125"	5/16" OVER 12"-18"
3750"	3/8" OVER 18"-22"
4375"	7/16" OVER 22"-28"
5000"	1/2" OVER 28"-34"
5625"	9/16" OVER 34"-42"
6250"	5/8" OVER 42"-48"

OVER 48" MUST BE
APPROVED BY R.R. CO.

NOTE: THIS CHART IS ONLY
FOR SMOOTH STEEL CASING
PIPES WITH MINIMUM YIELD
STRENGTH OF 35,000 PSI.

FORMULA TO FIGURE CASING
LENGTH WITH ANGLE OF
CROSSING OTHER THAN 90°



- NOTES:
- 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM E. OF TRACK.
 - 2) CASING TO EXTEND BEYOND THE E. OF TRACK AT RIGHT ANGLES THE GREATER OF 20' + 20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
 - 3) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, E. OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
 - 4) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
 - 5) ALLOWABLE FIXED OBJECTS INCLUDE: BACKFILLS OF BRIDGES; E. OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR CULVERTS.
 - 6) CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

- A) IS PIPELINE CROSSING WITHIN DEDICATED STREET? YES; ☒ NO; ☒
- B) IF YES, NAME OF STREET _____
- D) DISTRIBUTION LINE ☒ OR TRANSMISSION LINE _____
- C) CARRIER PIPE:
COMMODITY TO BE CONVEYED WATER
OPERATING PRESSURE 90 PSI
WALL THICKNESS 3/8" DIAMETER 3" MATERIAL HDPE
- E) CASING PIPE:
WALL THICKNESS 1/4" DIAMETER 12" MATERIAL STEEL
NOTE: CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.
- F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
☒ DRY BORE AND JACK (WET BORE NOT PERMITTED);
TUNNEL; OTHER _____
- G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? YES; ☐ NO; ☒
- H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK _____ (30' MIN.)
- I) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE ☒ DOES; ☒ DOES NOT; EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO. 2060517042

EXHIBIT "A"

(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.

Cane Creek

(SUBDIVISION)

M.P. 0.25 E.S. 13+30.2

ENCASED Pipeline CROSSING AT

Thompson Grand UT

(NEAREST CITY) (COUNTY) (STATE)

United States Department of Energy

(APPLICANT)

RR FILE NO. 2399-44 DATE 7-10-06

WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS
DEPARTMENT MUST BE CONTACTED IN ADVANCE
OF ANY WORK TO DETERMINE EXISTENCE AND
LOCATION OF FIBER OPTIC CABLE.
PHONE: 1-800-336-9193

EXHIBIT B
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period.

required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this agreement by Contractor.

B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify Railroad under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against Railroad.

E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors, and shall require all subcontractors to maintain the insurance coverage required to be maintained by Contractor as provided in this Agreement, and to indemnify Contractor and Railroad to the same extent as Railroad is indemnified by Contractor under this Agreement.

EXHIBIT C
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Union Pacific Railroad Company
Insurance Provisions For
Contractor's Right of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from the Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

- B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,00 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. **Workers Compensation and Employers Liability** insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excel workers compensation coverage must be provided. Coverage must include liability arising out of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. Railroad Protective Liability insurance.** Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.
- E. Umbrella or Excess insurance.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. Pollution Liability insurance.** Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

- G.** All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J.** Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. Clothing

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
- (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:

- 100 feet of a locomotive or roadway/work equipment
- 15 feet of power operated tools
- 150 feet of jet blowers or pile drivers
- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
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- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.

- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.